

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

KURT PONZAR, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	Case No. 4:12CV2219 CDP
)	
MATTHEW LAYFIELD, et al.,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

In a scheduling conference¹ and two prior Orders dated September 16, 2013 and October 3, 2013, I explained why plaintiffs' federal claims were deficient and directed them to either file another amended complaint or dismiss their federal claims by December 16, 2013. I also reminded plaintiff Kurt Ponzar (who was then proceeding *pro se*) and Sandra Ponzar's attorney of their ethical obligations under Federal Rule of Civil Procedure 11 with respect to filing pleadings in this Court. At that time, Sandra Ponzar's attorney Gregory Futhey was unwilling to state, as an officer of the Court, that the pleadings filed by his client before he entered the case met the requirements of Rule 11. On December 15, 2013, plaintiff Sandra Ponzar's attorney filed a motion to withdraw. Plaintiffs then filed a *pro se* proposed third amended complaint. On the same day, attorney Larry A.

¹The scheduling conference was held on the record on September 16, 2013.

Bagsby entered his appearance on behalf of both plaintiffs. However, Mr. Bagsby did not sign or file the motion for leave to file the third amended complaint, nor did he sign or file the third amended complaint itself.

The motion for leave does not comply with my requirements set out in my September 16, 2013 Memorandum and Order in that it does not set out “the basis for federal jurisdiction and an accompanying memorandum of law which explains why amendment would not be futile, would cure the numerous deficiencies in the operative complaint, and would vest this Court with federal subject-matter jurisdiction.” [Doc. #29]. Moreover, the proposed third amended complaint does not appear to cure any of the deficiencies of the most recent amended amended complaint. If Larry Bagsby intends to represent plaintiffs in this action, then he must file a motion for leave to amend in compliance with my September 16, 2013 Memorandum and Order **and** must either sign and file a proposed fourth amended complaint or an affidavit attesting as an officer of this Court that the proposed third amended complaint filed by his clients complies with Fed. R. Civ. P. 11.² If he does this, Mr. Bagsby will be adopting the proposed third amended complaint as if it were filed by him, with all attendant ethical obligations.

²Simply filing an affidavit without filing a properly supported motion to amend in accordance with my September 16, 2013 Memorandum and Order will **not** constitute compliance with this Order and will result in a dismissal and remand without further notice by the Court.

Plaintiffs have already had two chances to amend their complaint, plus a lengthy extension of time to comply with my September 16, 2013 Order. Despite these numerous bites at the apple, plaintiffs have once again failed and refused to comply with my Orders. I warned plaintiffs that failure to comply with my Orders would result in the dismissal of their deficient federal claims and a remand of their state claims to state court. I do not know whether an attorney can state any valid federal claims on plaintiffs' behalf, but I will give Mr. Bagsby one chance to try. This is plaintiffs' last chance to avoid a dismissal of their federal claims and a remand back to state court. No extensions of time will be granted. If plaintiffs, through counsel, do not properly move for leave to amend as set out above or to dismiss their federal claims by noon on December 27, 2013, I will dismiss the federal claims for the reasons stated in my September 16, 2013 Memorandum and Order, and will remand the remaining state law claims back to state court without further notice from this Court.


Accordingly,

IT IS HEREBY ORDERED that plaintiffs shall either file a motion for leave to amend in accordance with my Memorandum and Order dated September 16, 2013 or for dismissal of their federal claims by no later than **noon on December 27, 2013.** Defendants may file any opposition to amendment by

January 10, 2014, and plaintiffs may file any reply brief in support of their motion by **January 17, 2014**.

IT IS FURTHER ORDERED that if plaintiffs fail to comply with this Order, **I will dismiss the federal claims for the reasons stated in my September 16, 2013 Memorandum and Order, and will remand the remaining state law claims back to state court without further notice from this Court.**

IT IS FURTHER ORDERED that the motion of Gregory Futhey to withdraw as counsel for plaintiff Sandra Ponzar [#32] is granted.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 19th day of December, 2013.